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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,131	01/03/2007	Tom Parkinson	27350U	5635
20529	7590	05/05/2009	EXAMINER	
THE NATH LAW GROUP			KLAYMAN, AMIR ARIE	
112 South West Street			ART UNIT	
Alexandria, VA 22314			PAPER NUMBER	
			3711	
			MAIL DATE	
			DELIVERY MODE	
			05/05/2009	
			PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,131	<b>Applicant(s)</b> PARKINSON, TOM	
	<b>Examiner</b> AMIR KLAYMAN	<b>Art Unit</b> 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/14/06</u>                                                   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because the abstract should be a one paragraph with no more than 150 words and no drawings. Correction is required. See MPEP § 608.01(b).
2. Claim 10 is objected to because of the following informalities: missing period. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, 10, 12-13, and 15 are rejected under 35 U.S.C. 102(b) as being unpatentable by Broadway US 5386989.

Regarding claim 1, Broadway discloses: a sport practice device (col 5-20); two elastic cords (fig 1, cords 12& 13), a ball (fig 1, ball 18), and two means to connect the ball to the cords (fig 1, swivel 15 and O- ring 14; see also col 2, ln 39-49); the ball is located equally between the two cords (see fig 1); the two cords are fasten together by the two receiving means (see fig 1, cords 12&13 are fasten together via swivel 15 an

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ring 14); the forming of a "Y" shape (see fig 1 and col 2, ln15-24), and secured to two vertical supporters (fig 1, posts 19& 20; see also col 2, ln 63-68& col 3,1-5).

Regarding claim 4, Broadway discloses: the elastic cords have anchoring means at each end (cord 12 with anchoring ring 14 at one end and anchored to the other end via eyelet 27& wire 21; cord 13 anchored via ring 14 at one end and via eyelet 28& wire 22 at the other end).

Regarding claim 10, Broadway discloses: the height of the ball determined by a user (col 2, ln 49-54, wherein, the height of the ball determined by cord 16 and can be in any different length).

Regarding claim 12, Broadway discloses: the anchoring of the cords via clip with swivel joint (fig 2, fastener 40 with the swivel joint thereon).

Regarding claim 13, Broadway discloses: a tennis ball (col 2, ln 39-40).

Regarding claim 15, Broadway discloses: the "Y" shape using separate section of the cord (see fig 1).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broadway US 5386989 as applied to claim 1 above, and further in view of Oyarzabal US 74966367.

Regarding claim 2, Broadway does not disclose: receiving means (swivel 15 and ring 14) are on opposite side of the ball, however, Oyarzabal discloses: receiving means on opposite sides of the ball (fig 3 with receiving means 42a on opposite side of the ball). It would have been obvious at the time the invention was made to modify Broadway's and to have the ball with receiving means on opposite sides of the ball as taught by Oyarzabal, for the reason that a skilled artisan would be motivated to combine prior art elements (Broadway with Oyarzabal) according to known methods (Oyarzabal's receiving means on opposite sides of the ball) to yield predictable results of attaching the ball to the elastic cords via the receiving means.

Regarding claim 3, Oyarzabal discloses: the means are on the peripheral are of the ball (see fig 3 with receiving means 42a).

7. Claims 5-9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broadway US 5386989.

Regarding claim 5, Broadway discloses: the securing means provide (fig 1, ring 14), however, Broadway does not disclose: the securing means is tape. It has been held that the particular configuration of the object is nothing more than one of numerous

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configurations a person of ordinary skill in the art would find obvious as a matter of users preference or design choice. See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1976) (See MPEP 2144.03)' thus, using Broadway's ring or the claimed tape, as a secure means, will perform the same.

Regarding claims, 6-9, Broadway does not disclose: these specific ranges, however, claimed which fell within the broad scope of the references were held to be unpatentable thereover because, among other reasons, there was no evidence of the criticality of the claimed ranges of weight or proportions; see *In re Hoeschele*, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969); thus, having these specific ranges is not an evidence of new and unobvious matter.

Regarding claim 14, Broadway does not disclose: a soccer ball, however, Broadway explicitly suggest that any other type ball can be use (col 2, ln 51-53). It would have been obvious at the time the invention was made to modify Broadway's game and to have a soccer ball thereon, for the reason that a skilled artisan would be motivated by Broadway suggestion.

8. Claim 11 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Broadway US 5386989.

Regarding claim 11, Broadway discloses: elastic cords (fig 1 cords 12&13); wherein it is inherent to have elastic cords configured/constructed with a plastic type material, which is also been used in a bungee type cord.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMIR KLAYMAN whose telephone number is (571)270-7131. The examiner can normally be reached on Mo.- Fr. (7:30AM-5:00PM). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene KIM can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AK/

4/30/09

/Gene Kim/

Supervisory Patent Examiner, Art Unit 3711